

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-59

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Bradenton, Florida)

RM-7923

**NOTICE OF PROPOSED RULE MAKING**

Adopted: March 20, 1992; Released: March 31, 1992

By the Acting Chief, Allocations Branch:

Comment Date: May 22, 1992

Reply Comment Date: June 17, 1992

1. The Commission has before it the petition for rule making filed by Sunshine State Broadcasting Company, Inc. ("petitioner"), licensee of Station WDUV(FM), Bradenton, Florida, requesting the substitution of Channel 278C for Channel 277C at Bradenton, and the modification of Station WDUV(FM)'s license to specify Channel 278C. Petitioner states that it will apply for the channel, if allotted.

2. In support of its proposal petitioner submits that Station WDUV(FM) currently operates with 100 KW at 177 meters on Channel 277C. However, it is prevented from exceeding the minimum Class C HAAT of 300 meters due to Commission spacing restrictions and Federal Aviation Administration ("FAA") limitations. The proposed substitution of Channel 278C for Channel 277C at Bradenton will permit Station WDUV(FM) to locate in an area which will comply with all Commission and FAA restrictions on tall towers. Petitioner states it presently serves 1,620,000 persons at its existing facilities, whereas a HAAT of 457 meters from the proposed reference point will permit service to 2,274,000 persons.

3. We believe the public interest would be served by proposing the substitution of Channel 278C for Channel 277C at Bradenton, Florida. Channel 278C can be allotted to Bradenton in compliance with the Commission's minimum distance separation requirements with a site restriction of 41.7 kilometers (25.9 miles) northeast<sup>1</sup> in order to avoid short-spacing to a construction permit for Station WOOL(FM), Channel 279C2, Vero Beach, Florida. Channel 278C at Bradenton would be short-spaced to Channel 279C2, Station WXKB(FM), Cape Coral, Florida. However, Station WXKB was ordered in MM Docket No. 88-512 to specify operation on Channel 280C1. See 6 FCC Rcd 6966 (1991). Therefore, the grant of an authorization for Channel 278C at Bradenton, Florida, may be withheld

until Station WXKB(FM) is licensed on Channel 280C1 at Cape Coral, Florida. We shall also propose to modify the license for Station WDUV(FM) at Bradenton to specify operation on Channel 278C in lieu of Channel 277C.

4. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.
City	Present      Proposed
Bradenton, Florida	277C              278C

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **May 22, 1992**, and reply comments on or before **June 17, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

George R. Borsari, Jr.  
Borsari & Paxson  
2033 M Street, N.W., Suite 630  
Washington, D.C. 20036  
(Attorney for Sunshine State  
Broadcasting Company, Inc.)

7. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this Notice to WRCC Partners, P.O. Box 189, Cape Coral, Florida 33910 (Licensee of Station WXKB(FM)).

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte*

<sup>1</sup> The coordinates for Channel 278C at Bradenton are North

Latitude 27-49-20 and West Longitude 82-21-50.

presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.